REMARKS

Applicant traverses all of the rejections in the Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons. Claims 1 and 3-21 are currently pending and are rejected.

Claims 1 and 3-21 patentable over Goldszmidt/Ohran under §103

Claims 1 and 3-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,195,680 to Goldszmidt et al. ("Goldszmidt") in view of U.S. Patent No. 5,812,748 to Ohran et al. ("Ohran"). In addition, extensive reference was made in the rejections to U.S. Patent No. 5,918,017 to Attanasio et al. ("Attanasio"), which Goldszmidt incorporated by reference. The Applicant respectfully traverses the rejection.

According to MPEP §2143, to establish a *prima facie* case of obviousness under §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner responds by asserting that the test for obviousness is "what the combined teachings of the references would have suggested to those of ordinary skill in the art." (See Office Action, p. 3, ll. 1-2). The Applicants respectfully submit that the above statement is simply incorrect and not the standard of obviousness under 35 U.S.C. § 103. Rather, as correctly outlined in MPEP §2143, the prior art references must teach or suggest all the claim limitations. The issue of "ordinary skill in the art" may arise if the Examiner is asserting Official Notice asserting that a limitation would be obvious to one of "ordinary skill in the art."

If the Examiner is asserting Official Notice, the Applicant notes that under MPEP §2144.03, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")

However, in the present case, the Examiner has failed to show all the claim limitations. Notably, the Examiner does not seem to assert Official Notice with regard to the limitation of "concurrent processing of sub-parts of session-state data of the video session using a distributed managing module associated with each of the primary head-end controller and at least one secondary head-end controller." Rather, the Examiner seems to be relying on the teachings of Ohran.

As a result, the combination of Goldszmidt and Ohran fails to establish a *prima facie* case of obviousness, because the combination fails to teach or suggest all the claim elements as required for obviousness under 35 U.S.C. § 103. For example, the combination fails to teach or suggest the claimed concurrent processing of sub-parts of session-state data of the video session using a distributed managing module associated with each of the primary head-end controller and at least one secondary head-end controller.

Claim 1 recites, *inter alia*, "wherein said executing said video session comprises concurrently processing sub-parts of session-state data of said video session using a distributed managing module associated with each of said primary head-end controller and said at least one secondary head-end controller".

Goldszmidt does not teach or suggest the claimed concurrent processing of sub-parts of session-state data of the video session using a distributed managing module associated with each of the primary head-end controller and at least one secondary head-end controller. The Examiner concedes this in the Office Action. (See Office Action, p. 5, ll. 7-10). Moreover, Goldszmidt clearly teaches that when a connection fails an alternate server is connected. (See Goldszmidt, col. 8, l. 34 – col. 9, l. 47; FIG. 2(a) – 3(c), note BOLD arrows that indicate an active connection).

Furthermore, Ohran fails to bridge the substantial gap left by Goldszmidt because Ohran does not teach or suggest the claimed concurrent processing of sub-parts of session-state data of the video session using a distributed managing module associated with each of the primary head-end controller and at least one secondary head-end controller. Ohran is generally directed to a backup computer system that runs a special mass storage access program that communicates with a mass storage emulator program on the network file server. (See Ohran, abstract; col. 11, l. 51 - col. 12, l. 6; Fig. 7, emphasis added). In other words, when one of the computer systems go down, then the other computer system may still access an entire identical copy of the data on the non-functioning computer's mass storage device without delay.

The claimed concurrent processing of sub-parts of session-state data of a video session is not the same as emulating a mass storage device on the backup computer for the primary computer. To illustrate, the Applicants' invention may concurrently process sub-parts of session-state data using a distributed managing module. (See Applicant's specification, p. 10, ll. 6-8). As a result, the Applicants' invention allows session-state data to be processed faster than if processed on a single module. In contrast, Ohran teaches that each mass storage device is a mirror of the other mass storage device (i.e. the same data is on each mass storage device). (See Ohran, col. 12, ll. 20-22). Therefore, at best even if Ohran is broadly interpreted, Ohran only teaches retrieving entire identical copies of data from two different computers when both computers are running. Unlike the Applicant's invention that teaches concurrently processing sub-parts of session-state data using a distributed managing module, Ohran only teaches retrieving entire copies of data from either mass storage device that are mirrors of one another. As a result, Ohran cannot achieve the efficient parallel processing taught by the Applicant's invention using concurrently processing sub-parts of session-state data. Rather, Ohran teaches an inefficient method of duplicate processing on two entirely identical copies of data. (See Ohran, col. 12, ll. 20-22).

Furthermore, Ohran does not disclose any video sessions. As a result, the combination of Goldszmidt and Ohran lacks the claimed concurrent processing of sub-parts of session-state data of the video session using a distributed managing module

associated with each of the primary head-end controller and at least one secondary head-end controller.

In the alternative, even if the Examiner's asserted interpretation of obviousness is correct and the MPEP §2143 has incorrectly outlined the standard for obviousness, the Examiner is required to provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR v. Teleflex* 127 S. Ct. 1727, 1741 (2007). The Examiner fails to provide any articulate reasoning by simply asserting that Ohran teaches processing of sub-parts when Ohran clearly only teaches processing two entirely identical copies of data. (See Ohran, col. 12, ll. 20-22). Therefore, claim 1 is patentable over the combination of Goldszmidt and Ohran under §103.

Claims 3-10 depend, directly or indirectly, from claim 1 and, thus, inherit the patentable subject matter of claim 1, while adding additional elements and further defining elements. Therefore, claims 3-102 are also patentable over the combination of Goldszmidt and Ohran under §103 for at least the reasons given above with respect to claim 1.

Claim 11 recites, *inter alia*, "wherein at least one of said managing modules is a distributed managing module and processes sub-parts of said session-state data of said video session using at least two of said plurality of head-end controllers". For at least the same reasons given with respect to claim 1, claim 11 is also patentable over the combination of Goldszmidt and Ohran under §103.

Claims 12-21 depend, directly or indirectly, from claim 11 and, thus, inherit the patentable subject matter of claim 11, while adding additional elements and further defining elements. Therefore, claims 12-21 are also patentable over the combination of Goldszmidt and Ohran under §103 for at least the reasons given above with respect to claim 11.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests reconsideration and passage of the claims to allowance. If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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